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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* JAMES MCCOY and DOUGLAS BARNES
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11 Appeal 2010-003000
12 Application 09/785,010
13 Technology Center 3600
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16 Before HUBERT C. LORIN, ANTON W. FETTING, and
17 JOSEPH A. FISCHETTI, *Administrative Patent Judges*.
18 FETTING, *Administrative Patent Judge*.

19 DECISION ON APPEAL¹
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¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE²

James McCoy and Douglas Barnes (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of claims 22 and 24-38, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellants invented a micropayment accounting system for enabling in-kind transactions within a network. Specification 1.

An understanding of the invention can be derived from a reading of exemplary claim 22, which is reproduced below [bracketed matter and some paragraphing added].

22. A distributed system for publishing and retrieving content in a network, comprising:

[1] a plurality of computer systems connected together in a peer-to-peer fashion and having characterizing network resources including any disk space, bandwidth, and CPU cycles for performing peer-to-peer interactions across the network, wherein the network resources can be contributed to the network by one or more contributing computer systems in return for a predetermined amount of credits, wherein the

² Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed January 8, 2007) and Reply Brief ("Reply Br.," filed August 17, 2007), and the Examiner's Answer ("Ans.," mailed October 8, 2009), and Final Rejection ("Final Rej.," mailed January 9, 2006).

1 credits are accumulated by the contributing computer systems
2 contributing network resources to the network, and wherein the
3 contributing computer systems can exchange the credits with
4 other contributing computer systems for performing peer-to-
5 peer interactions across the network using the network
6 resources; and

7 [2] one or more agent applications distributed across the
8 network and associated with the computer systems for allowing
9 the computer systems to publish content to and retrieve content
10 from the network by initiating the peer-to-peer interactions
11 across the network between the agent applications.

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13 The Examiner relies upon the following prior art:

Saylor et al. US 6,888,929 B1 May 3, 2005

14 Claim 22 stands rejected under 35 U.S.C. § 112, second paragraph, as
15 being indefinite for failing to particularly point out and distinctly claim the
16 subject matter which the Appellants regard as the invention.

17 Claims 22 and 24-38 stand rejected under 35 U.S.C. § 103(a) as
18 unpatentable over Saylor.

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20 ISSUES

21 The issue of whether the Examiner erred in rejecting claims 22 under 35
22 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly
23 point out and distinctly claim the subject matter which the Appellants regard
24 as the invention turns on whether a person with ordinary skill in the art
25 would have understood what is being claimed by the limitation “having
26 characterizing network resources including.”

1 The issue of whether the Examiner erred in rejecting claims 22 and 24-
2 38 under 35 U.S.C. § 103(a) as unpatentable over Saylor turns on whether
3 Saylor describes or suggests several limitations of claim 22.

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5 FACTS PERTINENT TO THE ISSUES

6 The following enumerated Findings of Fact (FF) are believed to be
7 supported by a preponderance of the evidence.

8 *Facts Related to the Prior Art*

9 *Saylor*

10 01. Saylor is directed to a system and method for generating
11 revenue from providing pages of voice content when users input a
12 voice code corresponding to that content. Saylor 1:19-21. Saylor
13 describes an architecture where one or more voice network access
14 providers (VNAPs) connect to a plurality of users over a
15 communications network. Saylor 14:4-6. VNAPs further connect
16 to VPage server systems and a VCode registration system over a
17 communications network. Saylor 14:6-10. Content is delivered to
18 users from VNAP databases or from VPage server systems.
19 Saylor 14:21-24.

20 02. Saylor describes that a user can access content corresponding to
21 a VCode through an interactive communications device. Saylor
22 2:3-6. Pages consisting of groupings of content are referred to as
23 VPages. Saylor 2:13-17. A VCode consists of multiple portions
24 that correspond to a predetermined category, VBooks, or VPages.

1 Saylor 3:26-29 and 3:39-40. Many companies can provide
2 content and have codes assigned to that company. Saylor 4:7-10.
3 A VCode registry returns the address of the content and if the
4 VCode is a multi-level VCode the registry can resolve the various
5 portions of the VCode to identify the content. Saylor 4:19-23.

6 03. Various fee generating and billing methodologies may be
7 implemented. Saylor 6:53-54. A user may be charged based on
8 the duration of a call by implementing a 900 number. Saylor
9 6:54-57. A user can also be charged based on the time of the call,
10 on a per call or per VCode basis, or on a subscription or flat fee
11 basis. Saylor 6:57-63. Different fees can be assessed for different
12 VCodes. Saylor 6:63-64. VCodes can be assigned a specific
13 number of credits that a user purchases from the system and
14 purchases a VCode by submitting the appropriate number of
15 credits. Saylor 6:64-67. The per unit cost may be reduced for
16 users who use the system more. Saylor 7:2-3.

17 04. A voice network access provider (VNAP) charges the user the
18 fee for the content. Saylor 5:58-59. The VNAP shares a portion
19 of the fee with the content display host, and in situations where
20 the display host and content providers are the same, the content
21 provider receives a share proportional to its contribution to the
22 system. Saylor 5:58-67.

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ANALYSIS

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Claim 22 rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Appellants regard as the invention.

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The Examiner found that the limitation “having characterizing network resources including...” is vague and indefinite because the claim 22 fails to define this limitation. Ans. 3 and 10. The Appellants contend that the Specification fully describes this limitation, network resources have been in existence as described by the prior art, and a person with ordinary skill in the art would have understood what was being claimed. App. Br. 10-13 and Reply Br. 7-8. We agree with the Appellants. The test for definiteness under 35 U.S.C. § 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986)(citations omitted). Claim 22 specifically recites that characterizing network resources includes any disk space, bandwidth, and CPU cycles for performing peer-to-peer interactions across the network. As such, a person with ordinary skill in the art would have understood what was being claimed since the claim language itself provides an adequate description of what is being claimed. The Examiner failed to set forth any specific rationale that illustrates why this limitation is vague and indefinite. As such, we find that the Examiner erred in rejecting claim 22 under 35 U.S.C. § 112, second paragraph, as being indefinite.

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*Claims 22 and 24-38 rejected under 35 U.S.C. § 103(a) as unpatentable
over Saylor.*

The Appellants first contend that (1) Saylor fails to describe network resources can be contributed to a network by one or more contributing computer systems, as per claim 22. App. Br. 2-4 and Reply Br. 1-2. We disagree with the Appellants. Saylor describes a system where a user can access content that is provided by a content provider. FF 02. The system includes users, voice network access providers (VNAPs), VPage server systems, and a VCode registration system that are all connected over a communications network. FF 01. The VCode registration system maintains the address of the content and users can access the content from either VNAP databases or from VPage server systems of the content providers. FF 01-02. Since the content can be accessed by a server system provided by the content providers that are independent of the VNAPs, the content providers are contributing these server systems, the disk space required to store the content, and the bandwidth to transfer the content to the VNAP network. As such, Saylor describes this limitation of claim 1. The Appellants also argue that the claimed invention is distinguished from the prior art because the claimed invention keeps track of which users provide resources, content, and indexing services within the network. App. Br. 3. However, claim 22 does not require these limitations and therefore this argument is not found to be persuasive.

The Appellants also contend that (2) Saylor fails to describe earning credits by contributing network resources to a network, as per claim 22. App. Br. 4-5 and Reply Br. 2-3. We disagree with the Appellants. The plain and ordinary definition of the term “credit” encompasses any benefit,

1 compensation, or acknowledgement for the performance of a task. Saylor
2 describes various fee generating and billing methodologies may be
3 implemented for the system. FF 03. The VNAP charges the user for the
4 content and shares a proportion of the revenue generated with the display
5 host. FF 04. In situations where the display host and the content providers
6 are the same entity, content provider receives a share proportional to its
7 contribution to the system. FF 04. As such, the content providers are
8 compensated for their contributions to the system and therefore are receiving
9 or earning credits for their contributions to the network. The Appellants
10 further argue that Saylor fails to describes the network resources include any
11 of disk space, bandwidth, or CPU cycles. App. Br. 4. However, as
12 discussed *supra*, Saylor describes that a content provider contributes VPage
13 server systems that provide content to the users and therefore contribute the
14 disk space to store the content and the bandwidth to transfer the content to
15 the user.

16 The Appellants further contend that (3) Saylor fails to describe a
17 distributed system for publishing and retrieving content, as per claim 22.
18 App. Br. 5-6 and Reply Br. 3-4. The Appellants specifically argue that the
19 Specification defines a distributed system to consist of a group of non-alike
20 computers that are connected together by a network and equipped with
21 corresponding software so that the computers can coordinate their activities
22 in a common scheme. App. Br. 5. We disagree with the Appellants. As
23 discussed *supra*, Saylor describes a system that includes users, voice
24 network access providers (VNAPs), VPage server systems, and a VCode
25 registration system that are all connected over a communications network.
26 FF 01. Each computer in this system includes software that enables a user to

1 access content. FF 01-04. As such, Saylor describes a distributed system,
2 even as defined by the Appellants.

3 The Appellants additionally contend that (4) Saylor fails to describe
4 publishing and retrieving content via peer-to-peer interactions and (5) Saylor
5 fails to describe agent applications distributed across the network, as per
6 claim 22. App. Br. 6-7 and Reply Br. 4-5. The Appellants specifically
7 argue that a user must access some server to access a desired VPage and
8 therefore Saylor must be using a client-server model instead of a peer-to-
9 peer model. App. Br. 6. We disagree with the Appellants. Saylor describes
10 that the address of a VPage is returned based on a submitted VCode. FF 02.
11 A VCode can be a multi-level VCode, where the registry can resolve the
12 various portions of the VCode to identify the content. FF 02. Since content
13 is distributed amongst several servers and a user accesses content by
14 accessing specific portions of the content on different servers, Saylor
15 describes a peer-to-peer model and the use of agent applications to publish
16 and retrieve content from the network. Although a user connects to a server
17 to find the address of a VPage and that model resembles a client-server
18 model, the access of content where the content is distributed in portions
19 across several machines is descriptive of a peer-to-peer model.

20 The Appellants further contend that (6) the Examiner has failed to set
21 forth any evidence of a motivation to modify Saylor and (7) there is no
22 motivation to modify Saylor. App. Br. 8-10 and Reply Br. 6-7. We
23 disagree with the Appellants. As discussed *supra*, Saylor suggests that
24 content providers are compensated for their contributions of disk space
25 (storage of content) and bandwidth (access to content) to the VNAP
26 network. Saylor is concerned with distributing revenue generated by the

1 VNAP and collected from users to display hosts and content providers for
2 their contributions to the network. FF 04. Therefore, it would have been
3 obvious to a person with ordinary skill in the art to measure contributions by
4 disk space, bandwidth, or CPU cycles since such metrics are commonly used
5 in the computer networking arts. Saylor suggests a content provider
6 contributes at least one of disk space, bandwidth, or CPU cycles and a
7 person with ordinary skill in the art would have found it obvious compensate
8 content providers based on any of these metrics in order to fairly distribute
9 revenue. As such, a person with ordinary skill in the art would have found it
10 obvious to modify Saylor to include these features.

CONCLUSIONS OF LAW

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13 The Examiner erred in rejecting claim 22 under 35 U.S.C. § 112, second
14 paragraph, as being indefinite for failing to particularly point out and
15 distinctly claim the subject matter which the Appellants regard as the
16 invention.

17 The Examiner did not err in rejecting claims 22 and 24-38 under 35
18 U.S.C. § 103(a) as unpatentable over Saylor.

DECISION

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21 To summarize, our decision is as follows.

- 22 • The rejection of claim 22 under 35 U.S.C. § 112, second paragraph, as
23 being indefinite for failing to particularly point out and distinctly

1 claim the subject matter which the Appellants regard as the invention
2 is not sustained.

- 3 • The rejection of claims 22 and 24-38 under 35 U.S.C. § 103(a) as
4 unpatentable over Saylor is sustained.

5

6 No time period for taking any subsequent action in connection with this
7 appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.
8 § 1.136(a)(1)(iv) (2007).

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10 AFFIRMED

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